

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Federal-State Joint Board on)	CC Docket No. 96-45
Universal Service)	
)	
To: The Commission		

REPLY TO OPPOSITIONS AND COMMENTS

Nextel Partners, Inc. (“Nextel Partners”), by undersigned counsel and pursuant to section 1.429(g) of the Commission’s rules, 47 CFR § 1.429 (g), as well as the Commission’s Federal Register notice published July 20, 2005,¹ hereby files this Reply to Oppositions and Comments (“Reply”). In this Reply, Nextel Partners responds to the Comments filed by ITTA, WTA and TDS,² and the Oppositions filed by the Nebraska Companies³ and by OPASTCO and NTCA.⁴

I. INTRODUCTION

Nextel Partners supports the Commission’s establishment of a framework structure for designating ETCs and for requiring reporting by ETCs. Nextel Partners’

¹ See “Petition for Reconsideration of Action in Rulemaking Proceeding,” 70 FR 41756 (July 20, 2005), in which the Commission established dates for the filing of Oppositions and Replies in response to petitions seeking reconsideration of the Report and Order establishing the framework for designation of eligible telecommunications carriers (ETCs) (*Federal-State Joint Board on Universal Service*, Report and Order, 20 FCC Rcd. 6371 (2005) (hereafter, “*Report and Order*”).

² *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Comments on Petitions for Reconsideration of ETC Designation Order, filed by the Independent Telephone & Telecommunications Alliance (ITTA), the Western Telecommunications Alliance (WTA), and TDS Telecommunications Corp. (TDS), August 4, 2005.

³ *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Opposition to Petitions for Reconsideration and Clarification, filed by the Nebraska Rural Companies, August 4, 2005.

⁴ *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Opposition to Petitions for Reconsideration of the National Telecommunications Cooperative Association and the Organization for the Promotion and Advancement of Small Telecommunications Companies, August 4, 2005.

Petition for Reconsideration in this proceeding (“Nextel Partners Petition”)⁵ seeks only minor changes and clarifications to the Commission’s *Report and Order* with a view to ensuring that the goals of Universal Service articulated by Congress are met. Specifically, Nextel Partners asks the Commission: (1) to clarify that states cannot adopt their own requirements that might inhibit or disadvantage wireless ETCs; (2) to eliminate the “equal access certification” requirement or otherwise clarify that the Commission has not prejudged whether to impose equal access in any case and further that only the Commission, and no state, has authority to make such a decision; (3) to require the submission of an eighteen month buildout plan, rather than a five-year plan; and (4) to clarify that states must follow federal law, rather than state law, in determining what constitutes a reasonable request for service.

II. STATES CANNOT IMPLEMENT CRITERIA THAT UNDERMINE CONGRESS’ GOALS BY DISADVANTAGING WIRELESS ETCs

As set forth in the Nextel Partners Petition, the designation of wireless providers as eligible telecommunications carriers (ETCs) and the use of the Universal Service Fund to support the buildout and maintenance of wireless services in rural areas is essential to achieving the goals established by Congress in setting up the Universal Service program, i.e., making sure that citizens in all regions of the nation have access to the same telecommunications services. Accordingly, as discussed in the Nextel Partners Petition, states cannot adopt regulations designed to impede wireless carriers from becoming designated or functioning as ETCs. While not overtly disputing this essential tenet of Universal Service, the parties representing wireline interests in this proceeding still seek

⁵ See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Petition for Reconsideration and Clarification filed by Nextel Partners, Inc., June 24, 2005.

to create obstacles and regulatory hurdles designed to forestall the designation and functioning of wireless ETCs. While it is important to protect the Universal Service Fund as well as to ensure that all ETCs use the support they receive to further Congress' goals, the Commission should reject efforts to unduly burden wireless ETCs.

III. THE STATES CANNOT IMPOSE EQUAL ACCESS ON WIRELESS ETCs

As discussed in the Nextel Partners Petition, Congress reserved to the FCC under section 332(c)(8) of the Act, 47 C.F.R. § 332(c)(8), the authority of whether to impose an equal access requirement on wireless carriers. Specifically, the Commission can impose equal access if: (1) it determines that subscribers to mobile services are denied access to the toll services provider of the subscribers' choice, and (2) it determines that it is in the public interest to impose equal access. Although the *Report and Order* requires each ETC to acknowledge that the Commission may require it to provide equal access, the Commission has not made a determination to require equal access of any wireless carrier. In order to avoid any confusion on this issue, the Nextel Partners Petition asks the Commission either to eliminate the equal access acknowledgment requirement, or else to clarify that the Commission has not prejudged the issue and that only the Commission, and no state, can determine whether to impose equal access on any wireless provider.

The Nebraska Companies oppose this request, and assert that states do have the authority to require wireless carriers to provide equal access as a condition to having status as an ETC.⁶ However, Congress' preemption of any state authority to impose equal access on wireless carriers is explicitly stated in section 338(c)(8). Although states may adopt ETC designation criteria that are different from those adopted by the

⁶ Nebraska Companies Opposition at 7-9.

Commission, states cannot change the list of supported services and they cannot adopt designation criteria that otherwise conflict with the Act. States cannot use their ETC designation authority to make an end run around section 338(c)(8). Similarly, states could not impose rate or entry regulation on wireless providers as a condition to being designated as an ETC. To avoid any uncertainty or confusion on this matter, the Commission should either eliminate the “equal access acknowledgment” requirement, or otherwise clarify that the Commission has not prejudged the matter and further that only the Commission, and no state, has the authority to impose an equal access requirement on wireless carriers.

IV. THE COMMISSION SHOULD REQUIRE ETCs TO SUBMIT EIGHTEEN MONTH NETWORK IMPROVEMENT PLANS RATHER THAN FIVE YEAR PLANS

The wireless providers and representatives that have participated in this proceeding have universally asserted that a five-year network improvement plan is unrealistic and/or unduly burdensome as it requires making predictions that are beyond the horizon of reliability. Even ITA/WTB/TDS acknowledge that “a five-year horizon is too long for any realistic network improvement plan.”⁷ Given the inherent unreliability of such five-year buildout plans, the preparation and review of submitted plans will amount to a time-consuming and burdensome exercise that is only tangentially grounded in reality. Since the ostensible purpose of requiring five-year projections is to provide a basis for making rational and reasoned judgments as to the commitment and performance of ETCs, this is not the best way to proceed. Instead, the Commission should require submission and consideration of projections based on an eighteen month window of time,

⁷ ITTA/WTB/TDS Comments at 3.

which will provide a much more reliable and accurate snapshot of provider plans. Moreover, the eighteen-month timeframe, along with periodic updates to keep the projections current, will be sufficient to allow regulators to assess how universal support moneys will be spent as well as to measure progress towards reaching buildout goals.

Despite the inherent unreliability of five-year projections, the wireline interests participating in this proceeding support maintaining the burdensome five-year requirement.⁸ Remarkably, ITTA/WTa/TDS argues that this requirement should only be applied to competitive ETCs and that incumbent wireline carriers should be exempt from having to submit any network buildout plans.⁹ This underscores the efforts of the wireline interests to erect roadblocks to the designation and functioning of wireless ETCs.

The wireline interests link their support of the five-year planning requirement to their assertion that competitive ETCs should be required to construct a network that will provide ubiquitous service. Given that the incumbent wireline carriers have had more than fifty years to construct their networks and, as Alltel points out, still cannot meet the ubiquitous service requirement,¹⁰ it is unrealistic to expect wireless carriers to build out ubiquitous networks in a five-year timeframe. Importantly, competitive ETCs receive support only for the customers that they serve. Since it is difficult for a CETC to attract customers in an area where it does not provide coverage, this means that a CETC does not receive support for such areas. Accordingly, the support mechanisms give CETCs

⁸ See Nebraska Companies Opposition at 2-4; ITTA/WTa/TDS Comments at 3-6; NTCA/OPASTCO Opposition at 2-5.

⁹ ITTA/WTa/TDS Comments at 5.

¹⁰ *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Opposition to Petition for Reconsideration, filed by Alltel Communications, Inc., August 3, 2005.

the incentive to extend their networks in order to attract new customers, and also protect the Fund by ensuring that CETCs are paid only for areas where they build their networks. Thus, it is not necessary to require unrealistic and burdensome five-year buildout projections to accomplish this goal.

V. THE DEFINITION OF REASONABLE REQUEST FOR SERVICE SHOULD BE BASED ON FEDERAL LAW RATHER THAN STATE LAW

As set forth in the Nextel Partners Petition, the interpretation of the requirement of meeting reasonable requests for service must be based on federal law, rather than state law. Although both Dobson Cellular¹¹ and ITTA/WTATDS¹² concur that the FCC and not states should define a reasonable request for service, the Nebraska Companies and NTCA/OPASTCO assert that this should be a matter for state law. In making their arguments, both the Nebraska Companies and NTCA/OPASTCO ignore that the reasonable request for service requirement is based on the requirement of section 201(a) of the Act that all common carriers must furnish “service upon reasonable request therefor.”¹³ As the requirement arises under section 201(a) of the Act, the definition of what constitutes a reasonable request for service is a matter of federal law. While a state may be free to decide pursuant to its authority under section 214(e) of the Act whether to require ETCs to meet reasonable requests for service as a condition to designation and the receipt of USF support, if a state chooses to adopt such a requirement, then the interpretation of whether a reasonable request for service is being met must be made in accordance with the guidelines established by the FCC in the *Report and Order*.

¹¹ *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Petition for Reconsideration of Dobson Cellular Systems, Inc., June 24, 2005, at 7.

¹² ITTA/WTATDS Comments at 7.

¹³ See Nextel Partners Petition at 9-10.

V. CONCLUSION

For the reasons set forth above, the Commission should grant the Nextel Partners Petition.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing Reply to Oppositions and Comments was served on each of the following by depositing the same in the U.S. Mail, first-class postage prepaid, on this 15th day of August 2005:

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